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November 17, 2022

**Via ECF**

Hon. Kenneth M. Karas  
The Hon. Charles L. Briant Jr.  
Federal Building and United States Courthouse  
300 Quarropas Street  
White Plains, New York 10601-4150

**MEMO ENDORSED**

Re: *PharmacyChecker.com LLC v. National Association of Boards of Pharmacy et al.*  
No. 19-cv-07577-KMK

Dear Judge Karas:

I write for PharmacyChecker.com LLC under Section IX(a) of the Court's Individual Rules of Practice and the Stipulated Protective Order to request that certain confidential information included in plaintiff's pre-motion letter requesting a pre-motion conference re motion to dismiss NABP's amended counterclaim be conditionally placed under seal.

Under paragraph 24 of the Stipulated Protective Order, plaintiff filed the foregoing conditionally under seal because they contain "Protected Material" as defined by the Stipulated Protective Order. Dkt. 181. The material includes information derived from averments and documents, designated as Confidential or Outside Counsel Eyes Only by plaintiff PharmacyChecker.com.

PharmacyChecker.com, as the designating party, has the "obligation to file a motion to permanently seal the documents pursuant to applicable rules." *Id.* at 16.

While there is presumptive right of public access to judicial documents, that right is "not absolute." *Mirlis v. Greer*, 952 F.3d 51, 59 (2nd Cir. 2020) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 599 (1978)). In evaluating whether to grant a sealing request, the court must evaluate several factors: (1) whether the document qualifies as a judicial document; (2) the weight of the presumption of public access; and (3) whether any countervailing factors or higher values outweigh the right of public access to the judicial document. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2nd Cir. 2006).

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Conditional sealing of the above-referenced materials is appropriate in this instance. See, e.g., *GoSMiLE, Inc. v. Levine*, 769 F. Supp 2d 649–50 (S.D.N.Y. 2011) (allowing sealing of documents “contain[ing] highly proprietary [business material]”).

Respectfully submitted,

BONALAW PC



Aaron Gott

Plaintiff's letter motion to conditionally seal the referenced material in Dkt. No. 320 is granted. Defendant NABP's letter motion to conditionally seal the referenced material in Dkt No. 314 is also granted. Plaintiff's motion to permanently seal the conditionally sealed materials is due by no later than December 2, 2022. The Clerk of the Court is directed to terminate the pending motions at Dkt. Nos. 313 and 318.

SO ORDERED

  
KENNETH M. KARAS U.S.D.J.

November 18, 2022